

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JESSE SOLOMON

*

Plaintiff

*

vs.

* CIVIL ACTION NO. MJG-14-3570

THE BERT BELL/PETE ROZELLE NFL *
PLAYER RETIREMENT PLAN and THE *
NFL PLAYER SUPPLEMENTAL *
DISABILITY PLAN *

Defendants

* * * * *

MEMORANDUM AND ORDER RE: PREJUDGMENT INTEREST

The Court has before it Plaintiff's Motion for Prejudgment Interest [ECF No. 37] and the materials submitted relating thereto. The Court finds no need for a hearing.

As set forth in the Memorandum and Order Re: Summary Judgment [ECF No. 35], Plaintiff Jesse Solomon ("Solomon") filed an application with the Disability Initial Claims Committee ("the Committee") for total and permanent disability benefits ("T&P benefits") that was, ultimately, denied by the Retirement Board ("the Board") on November 19, 2009. On December 12, 2010, Solomon filed a second application seeking T&P benefits under the NFL Retirement Plan ("the Plan") related to neurological and cognitive impairments resulting from countless helmet-to-helmet impacts sustained during his NFL career. AR 564-68. The Committee was deadlocked as to whether Solomon was totally and

permanently disabled ("TPD"), and his application was deemed denied on March 9, 2011. AR 655. On April 27, 2011, Solomon appealed the denial of the Second Application to the Board. AR 672.

On June 21, 2011, an SSA Administrative Law Judge issued a Notice of granting Solomon disability benefits and finding him disabled as of October 29, 2008. At some time thereafter, Solomon notified the Board of the SSA determination. On August 4, 2011, the Board designated Solomon TPD, awarding benefits effective October 1, 2010, but did not award Solomon the higher category of T&P benefits he sought, Football Degenerative benefits, because - it stated - he had not become TPD within 15 years of his retirement. Under the terms of the Plan, this finding meant Solomon was eligible for Inactive benefits only, a lower category of T&P benefits.

On September 27, 2011, Solomon appealed to the Board seeking reclassification of his benefits to the higher category of T&P benefits. The Board rejected the appeal on November 16, 2011.

On November 14, 2014, Solomon filed the instant lawsuit for denial of benefits, pursuant to ERISA § 502(a)(1)(B), 29 U.S.C.

§ 1132,¹ in response to the Board's November 2011 final denial of Football Degenerative benefits.

Plaintiff seeks prejudgment interest at a rate of six percent per annum compounded monthly from October 2010, the effective date of the award of T&P benefits. Defendants do not oppose a grant of prejudgment interest. However, Defendants contend that Plaintiff's proposed award is unreasonably excessive. The Court agrees with Defendants.

As stated in Quesinberry v. Life Ins. Co. of N. Am., 987 F.2d 1017 (4th Cir. 1993):

ERISA does not specifically provide for pre-judgment interest, and absent a statutory mandate the award of pre-judgment interest is discretionary with the trial court. The district court in this case exercised its discretion to award pre-judgment interest in order to compensate Mr. Quesinberry for the loss of the use of his funds. The rate of pre-judgment interest for cases involving federal questions is a matter left to the discretion of the district court.

Id. at 1030-31 (internal citations omitted).

The period in question herein is a period during which the Maryland common law rate (6% per annum) was substantially in

¹ "A civil action may be brought by a participant or beneficiary . . . to recover benefits due to him under the terms of the plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B).

excess of market rates.² Plaintiff's suggestion that the Court should use this rate and, in addition, compound interest monthly, is beyond the range of reasonable. Moreover, Plaintiff has presented nothing to support the contention that Defendants' having the use of Plaintiff's money would have resulted in a gain to Defendants or loss to Plaintiff at a rate at all near the 6% common law rate. Yet, the rates proposed by Defendants also do not appear appropriate.

Because the record does not refute Defendants' contention that the Maryland rate was much higher than the true value of the funds in question during the period at issue, the Court shall award prejudgment interest commencing October 2010 as Plaintiff contends but at one-half the Maryland common law rate, 3% per annum, simple interest, calculated monthly.³

Accordingly:

1. Plaintiff's Motion for Prejudgment Interest [ECF No. 37] is GRANTED IN PART.

² The long-term composite rate published by the United States Treasury for October 1, 2010 was 3.26%, and annually thereafter: 2011 - 2.58%, 2012 - 2.38%, 2013 - 3.41%, 2014 - 2.88%, 2015 - 2.61%. See <https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=longtermrate>.

³ See App. A.

2. Plaintiff is awarded \$32,292.61 of prejudgment interest to the end of June 2016, with post-judgment interest to commence on July 1, 2016.

SO ORDERED, this Wednesday, June 8, 2016.

/s/
Marvin J. Garbis
United States District Judge

APPENDIX A

Month	Amount Paid (Inactive)	Total Owed (Football Degenerative)	Unpaid Amount	Interest on Unpaid Amount (3% Simple)
Oct-10	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 977.47
Nov-10	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 963.31
Dec-10	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 949.14
Jan-11	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 934.97
Feb-11	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 920.81
Mar-11	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 906.64
Apr-11	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 892.47
May-11	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 878.31
Jun-11	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 864.14
Jul-11	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 849.98
Aug-11	\$ 2,500.50	\$ 8,167.00	\$ 5,666.50	\$ 835.81
Sep-11	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 821.64
Oct-11	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 807.48
Nov-11	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 793.31
Dec-11	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 779.14
Jan-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 764.98
Feb-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 750.81
Mar-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 736.65
Apr-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 722.48
May-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 708.31
Jun-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 694.15
Jul-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 679.98
Aug-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 665.81
Sep-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 651.65
Oct-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 637.48
Nov-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 623.32
Dec-12	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 609.15
Jan-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 594.98
Feb-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 580.82
Mar-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 566.65
Apr-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 552.48
May-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 538.32
Jun-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 524.15
Jul-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 509.99
Aug-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 495.82
Sep-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 481.65
Oct-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 467.49

Month	Amount Paid (Inactive)	Total Owed (Football Degenerative)	Unpaid Amount	Interest on Unpaid Amount (3% Simple)
Nov-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 453.32
Dec-13	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 439.15
Jan-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 424.99
Feb-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 410.82
Mar-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 396.66
Apr-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 382.49
May-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 368.32
Jun-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 354.16
Jul-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 339.99
Aug-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 325.82
Sep-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 311.66
Oct-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 297.49
Nov-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 283.33
Dec-14	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 269.16
Jan-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 254.99
Feb-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 240.83
Mar-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 226.66
Apr-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 212.49
May-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 198.33
Jun-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 184.16
Jul-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 170.00
Aug-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 155.83
Sep-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 141.66
Oct-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 127.50
Nov-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 113.33
Dec-15	\$ 3,333.50	\$ 9,000.00	\$ 5,666.50	\$ 99.16
Jan-16	\$ 4,166.50	\$ 10,250.00	\$ 6,083.50	\$ 91.25
Feb-16	\$ 4,166.50	\$ 10,250.00	\$ 6,083.50	\$ 76.04
Mar-16	\$ 4,166.50	\$ 10,250.00	\$ 6,083.50	\$ 60.84
Apr-16	\$ 4,166.50	\$ 10,250.00	\$ 6,083.50	\$ 45.63
May-16	\$ 4,166.50	\$ 10,250.00	\$ 6,083.50	\$ 30.42
Jun-16	\$ 4,166.50	\$ 10,250.00	\$ 6,083.50	\$ 15.21
TOTALS	\$ 225,846.50	\$ 619,337.00	\$ 393,490.50	\$ 32,292.61